IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.PADMANABHAN NAIR

THURSDAY, THE 11TH OCTOBER 2007 / 19TH ASWINA 1929

MFA.No. 715 of 2001(B)

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OPMV.1086/1996 of MOTOR ACCIDENT CLAIMS TRIBUNAL, THALASSERY

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APPELLANT/PETITIONER:

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HAMZA MUTHETH VALAPPIL, S/O.ABDUL KADER, AGED 42 YEARS, RESIDING AT MUTHETH VALAPPIL HOUSE, PAPPINASSERI, PAPPINISSERI AMSOM DESOM, KANNUR DT.

BY ADV. SRI.A.MOHAMED MUSTAQUE

RESPONDENTS/RESPONDENTS:

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1. P.V.RAMESHAN, VIJAYA MANDIRAM, KUNNUPURAM, P.O.CHERUKUNNU, KANNUR.

2. SONIL. M., S/O.KESAVAN, CHERUKUNNU, KANNUR.

3. ORIENTAL INSURANCE CO.LTD., BRANCH OFFICE, KANNUR.

4. K.RAMACHANDRAN, S/O.KRISHNAN MANNADIYAR, JYOTHI, JINNA NAGAR, PALAKKAD.

5. T.T.JOHNY, S/O.THOMAS, AGED 36 YEARS, THURUTHIPALLY HOUSE, PAYYAMBALLI AMSOM DESOM, MANANTHAVADY, WAYANAD DIST.

6. NEW INDIA ASSURANCE CO. LTD., BRANCH OFFICE, PALAKKAD.

R1 BY ADV. SRI.M.RAMESH CHANDER
SRI.MATHEWS JACOB (SR.)
R4 BY ADV. SRI.T.M.SUNIL
SMT.S.CHITHRA
SRI.A.S.BRIJESH
R6 BY ADV. SHRI K.K.M.SHERIFF

THIS MISC. FIRST APPEAL HAVING BEEN FINALLY HEARD ON 11/10/2007, ALONG WITH MFA NO. 1099 OF 2001 AND CONNECTED CASES THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

**K. PADMANABHAN NAIR ,J.**

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**M.F.A.Nos.715/2001,**
**1075 of 2001,**
**1099 of 2001**
**&**
**1100 of 2001**

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**Dated, this the 11th day of October, 2007**

**JUDGMENT**

All these appeals arise from a common award passed by the Motor Accidents Claims Tribunal, Thalassery dismissing O.P.(MV) Nos.1083/1996, 1084/1996, 1085/1996 and 1086/1996. M.F.A.No.715/2001 is filed by the claimant in O.P.(MV) No.1086/1996. M.F.A.No.1075/2001 is filed by the claimant in O.P.(MV) No.1085/1996. M.F.A.No.1099/2001 is filed by the claimant in O.P.(MV) No.1083/1996 and M.F.A.No.1100/2001 is filed by the claimant in O.P.(MV) No.1084/1996.

2. Short facts necessary for the disposal of all three appeals are as follows: On 12.2.1996 the appellants were travelling in a mini lorry bearing registration No.KL-13-B/5383 driven by the 2nd respondent. When the mini lorry reached the place of accident another lorry bearing registration No.KL-9-B/699 driven by the 5th respondent came from the opposite direction and a head on collision took place. Appellants who were travelling in the mini lorry sustained injuries. They were taken to hospital and treated. They filed Original Petitions claiming compensation impleading the owners, drivers and insurers of both the vehicles involved in the accident. In the Original Petitions it was averred that the

accident occurred due to the negligent driving of the mini lorry by the 2nd respondent in which the appellants were travelling. They claimed various amounts as compensation from the 3rd respondent insurer of the mini lorry. Though the owners and drivers entered appearance they did not file any written statement. 3rd respondent insurer of the mini lorry contended that there was no negligence on the part of the driver of the mini lorry but the accident occurred due to the negligence of the 5th respondent who was driving lorry bearing registration No.KL-9-B/699. It was also contended that the police registered a case against the 5th respondent. It was admitted that the lorry was covered with valid policy of insurance. The 3rd respondent insurer disputed its liability. It was also contended that the mini lorry was over loaded and hence there was violation of policy conditions. Quantum of compensation claimed was also denied.

3. Sixth respondent insurer of lorry bearing registration No.KL-9-B/699 contended that the accident occurred due to the negligence of the 2nd respondent who was driving the mini lorry. It was admitted that lorry bearing registration No.KL-9-B/699 was covered with valid policy. But the quantum of compensation claimed was disputed.

4. Court below tried all the four cases separately and dismissed all the four cases. Challenging those awards these four appeals are filed. Since the four Original Petitions were originated from the same accident, the above four appeals were consolidated and heard together and disposed of by a common judgment. A

perusal of the judgment shows that in O.P.(MV) No.1086/1996 alone the claimant was examined. In three other cases nobody was examined either from the side of the claimant or from the side of the respondents. Insurers also did not adduce any evidence. The reasons stated for the disposal of all the four Original Petitions are identical. Tribunal found that though in the Original Petitions the specific case pleaded was that the accident occurred due to the negligence of the driver of the mini lorry. But in the FIR given to the police a different version was given. Before the Police it was alleged that accident occurred due to the negligence of the 5th respondent who was the driver of the other lorry. Petitioner in O.P.(MV) No.1086/1996 gave evidence to the effect that accident occurred due to the negligence of the 5th respondent who was the driver of the lorry bearing registration No.KL-9-B/699. The Tribunal found that there was variance between the pleading and proof. It is a case in which two vehicles were involved in the accident and persons travelling in one vehicle sustained injuries. Considering the entire matter it is only just and proper that the appellants who were travelling in the mini lorry be given another opportunity to adduce further evidence. For that purpose the matter has to go back.

In the result, all the appeals are allowed. Awards passed by the Tribunal dismissing all the four Original Petitions are hereby set aside. Original Petitions are remanded to the Tribunal for fresh disposal in accordance with law after giving both sides an opportunity to amend the pleadings and adduce evidence, if so

advised. Parties shall appear before the Tribunal on 26.11.2007.

**K. PADMANABHAN NAIR,**
**JUDGE.**

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K.PADMANABHAN NAIR, J.

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1075 of 2001
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&
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JUDGMENT

11th October, 2007.